

# **Department of State Health Services**

## **Response to House Committee on Criminal Jurisprudence**

### **Request for Information – Nov. 2020**

#### **Interim Charge 1**

Related to HB 1325, which relates to the production and transportation of hemp. Examine current procedures and resources used to determine the amount of tetrahydrocannabinol in a substance and prosecutorial impediments to ensuring existing state law can be enforced.

#### **Scope**

- HB 1325 (86th Legislature) created Chapter 443 in the Texas Health and Safety Code requiring the Department of State Health Services (department) to create and implement a new program relating to the licensing, manufacture, processing, distribution, and retail sale of consumable hemp products.
- The Legislature appropriated \$1.0 Million and 4.2 full time equivalent staff (FTEs) for the department to administer the program in Fiscal Years (FY) 2020 and 2021.

#### **Progress**

##### **Stakeholder Engagement and Planning**

- In June of 2019, the department developed a webpage to provide answers to frequently asked questions, provide updates on program status, and solicit information from stakeholders.
- The department met with the Texas Department of Public Safety (DPS) and Texas Department of Agriculture (TDA) in July, November, and December of 2019 to discuss and coordinate HB 1325 implementation.
- During the rules development process, the department held stakeholder meetings in October and December of 2019 to solicit input. The department had over 100 individuals attend each meeting.

##### **Rulemaking**

- The department published draft rules for informal comment from December 10, 2019, to January 13, 2020. The department received 1,599 informal comments during the time leading up to the publication of the proposed rules in the *Texas Register*.
- The department published the consumable hemp program rules in the May 8, 2020, issue of the Texas Register (45 TexReg 3010) with a public comment period ending on Monday, June 8, 2020.
- The department received 1,726 comments during the formal comment period relating to:
  - the prohibition of smokable hemp products,
  - clarification regarding the registration or licensing processes,
  - clarification and recommendations regarding testing and labeling requirements,
  - opposition to disqualification for a manufacturer/distributor license due to a felony drug conviction, and
  - clarification on other standards/requirements outlined in the rules.
- The department filed the rules for adoption in the Texas Register on July 13, 2020, with an effective date of August 3, 2020.
  - The department made minor non-substantive changes as a result of the formal comments.

## Program Operations

- The department developed an online process through its existing regulatory licensing database (Regulatory Automation System) for licensing consumable hemp manufacturers and distributors, and for registering retail sellers.
- The department began accepting registrations and licensing applications on August 1, 2020.
- The department distributed a statewide news release on August 3, 2020, related to the launch of the consumable hemp program.
- Per the statute, a retailer was not required to register a location to sell a consumable hemp product containing cannabidiol in this state until the 60th day after the date the department began issuing registrations. The 60<sup>th</sup> day was October 2, 2020.
- As of October 28, 2020, the department issued 1,212 retail registrations and 57 consumable hemp product licenses. Currently, there are 68 pending applications for the retail registration and approximately 350 for the consumable hemp product license.

## Implementation Challenges

Implementation of the consumable hemp program has resulted in the following challenges for applicants:

- Scheduling a fingerprint appointment for the required criminal background check with DPS due COVID-19 precautions. Reportedly, the scheduling appointments is taking from two days to two weeks.
- Submitting all required documents with their applications. The required documents are a completed Federal Bureau of Investigation (FBI) consent form, a letter from the property owner authorizing the department, DPS, and local law enforcement to go onsite to conduct inspections related to hemp, and the legal description of the property. The department is revising the checklist and application instructions posted on the [website](#) to further clarify what is needed in the required documentation.

## Revenue Collection

- The fee for a consumable hemp retail registration is \$155 and a consumable hemp product license is \$258.
- The department collected \$154,994 in revenue in FY 2020 and has collected \$143,003 in the first two months of FY 2021.

## Inspection and Testing

### Overview

- The legislature appropriated 4.2 FTEs to administer the program for FY 2020 and 2021. Based on the number of FTEs appropriated, staff dedicated to other program areas will conduct inspections of consumable hemp manufacturers and sampling of consumable hemp products.
  - Inspections will be limited based on available resources.
  - The volume will likely exceed current DSHS resources to effectively administer and regulate the consumable hemp program.
  - For this reason, DSHS has submitted an exceptional item request in its FY 2022-2023 Legislative Appropriations Request to increase the department's ability to handle program volume. The exceptional item request includes \$590,470 in general revenue funds over the biennium and 3.4 FTEs.

### **Manufacturer and Distributor Inspections**

- The department is finalizing procedures for consumable hemp manufacturer and distributor inspections.
  - The department anticipates starting inspections in January 2020 to allow entities time to comply with the new rules and regulations. Inspections of these entities will be limited due to staff resources.

### **Testing**

- The department does not anticipate any impediments in enforcing the regulatory limits outlined in the Texas Administrative Code for delta-9-tetrahydrocannabinol (THC), pathogens, heavy metals, and pesticides in consumable hemp products.
- The department developed sampling protocols/procedures and provided training to staff responsible for collecting random hemp samples.
  - Sampling and testing will likely not keep pace with the number of retail registrations, retail products, and consumable hemp licenses. For this reason, DSHS has submitted an exceptional item request in its FY 2022-2023 Legislative Appropriations Request to increase the department's ability to handle program volume. The exceptional item request includes \$590,470 in general revenue funds over the biennium and 3.4 FTEs.
- The department contracted with Texas Tech University, Center for Biotechnology & Genomics to conduct analysis for THC, pathogens, heavy metals, and pesticides in consumable hemp products collected by the program.
- At this time, the department has collected two retail hemp product samples. The results for THC and heavy metals were within acceptable limits.
- DSHS, DPS, and the Office of the Attorney General agreed upon protocols to refer cases to law enforcement as appropriate.